

Kempsey LEP 2013 – Administrative amendments to Clause 4.2A and 4.2C for Boundary Alterations and Rural Dwellings.

Proposal Title : **Kempsey LEP 2013 – Administrative amendments to Clause 4.2A and 4.2C for Boundary Alterations and Rural Dwellings.**

Proposal Summary : **The planning proposal seeks to amend Kempsey LEP 2013 to make changes to the provisions of clauses 4.2A and 4.2C to better address boundary alteration proposals and the recognition of dwelling entitlements on rural lots.**

PP Number : **PP_2016_KEMPS_004_00** Dop File No : **16/11378**

Proposal Details

Date Planning Proposal Received : **13-Sep-2016** LGA covered : **Kempsey**

Region : **Northern** RPA : **Kempsey Shire Council**

State Electorate : **OXLEY** Section of the Act : **55 - Planning Proposal**

LEP Type : **Policy**

Location Details

Street :

Suburb : City : Postcode :

Land Parcel : **This planning proposal applies to all land in the RU1 Primary Production, RU2 Rural Landscape, RU3 Forestry, RU4 Primary Production Small Lots, RU5 Village, R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living zones in the Kempsey local government area.**

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Land Release Data

Growth Centre :		Release Area Name :	
Regional / Sub Regional Strategy :		Consistent with Strategy :	
MDP Number :		Date of Release :	
Area of Release (Ha) :		Type of Release (eg Residential / Employment land) :	
No. of Lots :	0	No. of Dwellings (where relevant) :	0
Gross Floor Area :	0	No of Jobs Created :	0
The NSW Government Lobbyists Code of Conduct has been complied with : Yes			
If No, comment :	The Department of Planning and Environment's Code of Practice in relation to communications and meetings with lobbyists has been complied with to the best of the Region's knowledge.		
Have there been meetings or communications with registered lobbyists? :	No		
If Yes, comment :	The Northern Region office has not met any lobbyists in relation to this proposal, nor has the Region been advised of any meeting between other officers within the agency and lobbyists concerning this proposal.		

Supporting notes

Internal Supporting Notes :

External Supporting Notes : **The Kempsey LEP 2013 contains provisions that enable boundary adjustments of rural properties (clause 4.2C) and regulate dwellings on rural properties (clause 4.2A). Council proposes minor changes to these clauses to:**

- 1. Change the term "boundary adjustment" to "boundary change";**
- 2. Clarify that the number of dwellings permitted on a lot after a boundary adjustment/change will not increase;**
- 3. Insert a new clause requiring consideration of the natural or physical constraints of the land when considering a boundary adjustment/change;**
- 4. Inserting a new provision which ensures that boundary adjustments/changes do not result in the creation of new lots that can be further subdivided;**
- 5. Remove the word 'minor' from clause 4.2A(3)(e)(i); and**
- 6. Clarify that lots created by the boundary adjustment/change provisions, split zone lot subdivision provisions, or created under the Kempsey LEP 1987, will have a dwelling entitlement.**

Adequacy Assessment

Statement of the objectives - s55(2)(a)

Is a statement of the objectives provided? **Yes**

Comment : **The planning proposal contains a statement of objectives that adequately describes the intention of the planning proposal. The proposal seeks to amend the Kempsey LEP 2013 so as to clarify the requirements for boundary adjustments and the recognition of dwelling entitlements on reconfigured lots.**

Explanation of provisions provided - s55(2)(b)

Is an explanation of provisions provided? **Yes**

Comment : **The explanation of provisions adequately addresses the intended method of achieving the objectives of the planning proposal. The planning proposal includes a plain English explanation of the issues with the existing terminology in clauses 4.2A and 4.2C and describes the proposed changes to these clauses. The planning proposal includes draft clauses in Appendix A.**

Justification - s55 (2)(c)

a) Has Council's strategy been agreed to by the Director General? **Yes**

b) S.117 directions identified by RPA :

* May need the Director General's agreement

**1.2 Rural Zones
1.5 Rural Lands
2.1 Environment Protection Zones
2.2 Coastal Protection
2.3 Heritage Conservation
2.4 Recreation Vehicle Areas
3.1 Residential Zones
3.3 Home Occupations
3.4 Integrating Land Use and Transport
3.5 Development Near Licensed Aerodromes
4.1 Acid Sulfate Soils
4.2 Mine Subsidence and Unstable Land
4.3 Flood Prone Land
4.4 Planning for Bushfire Protection
5.1 Implementation of Regional Strategies
6.1 Approval and Referral Requirements
6.2 Reserving Land for Public Purposes
6.3 Site Specific Provisions
3.6 Shooting Ranges**

Is the Director General's agreement required? **Yes**

c) Consistent with Standard Instrument (LEPs) Order 2006 : **Yes**

d) Which SEPPs have the RPA identified?

**SEPP No 14—Coastal Wetlands
SEPP No 26—Littoral Rainforests
SEPP No 30—Intensive Agriculture
SEPP No 44—Koala Habitat Protection
SEPP No 62—Sustainable Aquaculture
SEPP No 71—Coastal Protection
SEPP (Exempt and Complying Development Codes) 2008
SEPP (Rural Lands) 2008**

e) List any other matters that need to be considered :

Have inconsistencies with items a), b) and d) being adequately justified? **Yes**

If No, explain : **See the assessment section of this report.**

Mapping Provided - s55(2)(d)

Is mapping provided? **No**

Comment : **No maps are required for the LEP amendment. The planning proposal does not propose any amendments to the LEP maps. The proposed provisions will apply to all land within the zones to which clauses 4.2A and 4.2 C of the Kempsey LEP 2013 apply so there is no need to include a map which identifies the subject land.**

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Community consultation - s55(2)(e)

Has community consultation been proposed? **Yes**

Comment : The planning proposal does not nominate a community consultation period. The proposal makes only minor changes to the provisions in clauses 4.2A and 4.2C to clarify requirements relating to boundary adjustments and dwelling entitlements. The proposal does not reclassify land, does not rezone land and does not raise any issues for infrastructure provision or issues of State or regional planning significance. It is considered that the proposal is a 'low impact' proposal and therefore a community consultation period of 14 days would be adequate.

Additional Director General's requirements

Are there any additional Director General's requirements? **No**

If Yes, reasons :

Overall adequacy of the proposal

Does the proposal meet the adequacy criteria? **Yes**

If No, comment :

Time Line
The RPA has provided a project timeline which estimates the completion of the planning proposal in March 2017. Therefore a 9 month period for completion of the planning proposal is recommended.

Delegation.
Council has provided a completed 'Evaluation Criteria for the Delegation of Plan Making Functions' form. The evaluation concludes that the proposal can be delegated to Council for making of the LEP amendment. It is considered that the matter is of local significance and it is recommended that an Authorisation for the execution of delegation be issued to Kempsey Council in this instance.

Overall Adequacy
The planning proposal satisfies the adequacy criteria by;

1. Providing appropriate objectives and intended outcomes.
2. Providing a suitable explanation of the provisions proposed for the LEP to achieve the outcomes.
3. Providing an adequate justification for the proposal.
4. Outlining a proposed community consultation program.
5. Providing a project time line
6. Providing an evaluation of the delegation of plan making functions

Proposal Assessment

Principal LEP:

Due Date :

Comments in relation to Principal LEP : The Kempsey LEP commenced in 2013. This planning proposal seeks an amendment to the Kempsey LEP 2013.

Assessment Criteria

Need for planning proposal : The proposal to amend the provisions in clauses 4.2A and 4.2C of the Kempsey LEP 2013 is not the subject of a specific strategic study or report. The need for these amendments has arisen due to issues identified by Council in the application of these controls in relation to development applications.

Council has identified the following main issues relating to the creation of rural lots:

- The boundary adjustment provisions contained in clause 4.2C are not achieving the outcomes Council intended and are inconsistent with similar provisions in the LEPs of neighbouring councils;
- boundary adjustments undertaken under clause 4.2C of the LEP may result in lots that are smaller than the minimum lot size shown for the land and therefore may lose the ability to have a dwelling erected on the lot;
- lots created using clause 4.1B to subdivide split zoned lots should have a dwelling entitlement; and
- lots created under the provisions of the former Kempsey LEP 1987 by varying the minimum lot size development standard using SEPP 1 should have their dwelling entitlements recognised in clause 4.2A.

The proposed changes include the following:

Clause 4.2A

1. Remove the word 'minor' from clause 4.2A(3)(e)(i) as it is unnecessarily restrictive;
2. Clarify that lots created by the boundary adjustment/change provisions in clause 4.2C will have a dwelling eligibility;
3. Clarify that lots created using the provisions of clause 4.1B (Split zoned lot subdivision) will have a dwelling eligibility;
4. Clarify that lots created under the provisions of Kempsey LEP 1987 and SEPP 1 have a dwelling eligibility; and
5. Clarify that lots created using the variation of development standards in clause 4.6 of the Kempsey LEP 2013 will have a dwelling eligibility.

Clause 4.2C

1. Change the term "boundary adjustment" to "boundary change";
2. Clarify that the number of dwellings permitted on a lot after a boundary adjustment/change will not increase;
3. Insert a new clause requiring consideration of the natural or physical constraints of the land when considering a boundary adjustment/change;
4. Inserting a new provisions which ensure that boundary adjustments/changes do not result in the creation of new lots that can be further subdivided; and

The proposed changes to the clauses are not expected to result in a significant increase in development or density of residential development in the rural zones. The existing boundary adjustment clause does not allow for the creation of additional lots and this will not change.

There is a chance that the recognition of dwelling entitlements for undersized lots created under the boundary adjustment provisions, the split zoned lot provisions, the variation of development standard provisions, or the previous Kempsey LEP 1987 may result in a small number of lots being granted a dwelling entitlement where one did not originally exist. This increase in the potential for dwellings on rural land is not expected to be significant as the majority of lots created by Council under these provisions would have occurred with the expectation that a dwelling could be erected on these lots.

The current provisions in Kempsey LEP 2013 could enable the approval of a dwelling on undersized lots with a variation to the development standard pursuant to clause 4.6 of the LEP.

Where an undersized lot was created pursuant to the provisions of the Kempsey LEP 2013 and SEPP 1, the concurrence of the Secretary would have been provided, or could have been assumed, for the approval of the development application. The recognition of the dwelling eligibility of these lots is not considered to be of State or regional significance.

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Enabling a dwelling entitlement for a lot created by the subdivision of a split zoned lot under clause 4.1B of the LEP will also not result in a significant increase in development or density on rural land. The split zone lot clause only applies to land that is partly zoned residential, business or industrial and requires that the resultant lot contains a portion of land which is zoned residential, business or industrial which complies with the minimum lot size for that zone.

The Explanation of Provisions in the planning proposal states that the LEP amendment will include provisions which will ensure that boundary changes will not facilitate new lots which can be further subdivided. However the example clause which Council has included in Appendix A (subclause 4.2C(5)) may be interpreted to preclude the use of existing lots which can currently be further subdivided in a boundary change. This issue was raised with Council however Council advised it was satisfied with the proposed drafting in the Appendix and would address this further with Parliamentary Counsel's Office at legal drafting stage. Council noted that this wording was used in the equivalent Bellingen and Nambucca LEP clauses. The explanation of provisions, Table 2, does clarify that these provisions will not create 'new' lots that can be further subdivided and therefore the final wording of the clause can be prepared by Parliamentary Counsel's Office.

The proposed amendments to the LEP are the best means of achieving the intent of the planning proposal. The proposed changes are intended to clarify Council's interpretation of the provisions and make them consistent with the LEPs of other neighbouring councils.

The principles behind the proposed additional provisions are considered to be appropriate.

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Consistency with strategic planning framework :

Mid North Coast Regional Strategy (MNCRS)

The proposed amendment to the Kempsey LEP 2013 to refine the provisions relating to boundary alterations and rural dwellings is not inconsistent with the MNCRS. The proposed changes to the provisions will facilitate the orderly development of rural land and will not result in an unacceptable increase in the density of development in rural areas.

The provisions relating to boundary alterations will still require the consideration of issues such a land use conflict and the agricultural viability of the land, and will include a new consideration of the physical or natural constraints of the land. The provisions will still require development consent for subdivision.

The changes to the provisions relating to the dwellings in rural areas (clause 4.2A) will recognise the dwelling eligibility of lots created by Council which were intended to accommodate a dwelling. The proposed changes will negate the need to undertake further variations to minimum lot size development standards to approve a dwelling when the lot had been created for that purpose in the first instance. This will reduce duplication and simplify the development consent process for dwellings in rural areas. The proposed changes will not remove the requirement to obtain approval for dwellings in rural areas and therefore will enable consideration of the suitability of the site.

The LEP will still contain provisions which apply minimum subdivision standards for rural land and limit dwellings in rural and environmental zones as required by the MNCRS.

Local Strategic Plans

The proposed changes to the provisions are not inconsistent with the RPA's strategies and structure plan.

SEPPs

The planning proposal identifies numerous SEPPs which are applicable to the land to which the planning proposal will apply, however it does not identify any inconsistencies with these SEPPs.

SEPP (Rural Lands) 2008 is relevant to the planning proposal as it contains principles for subdivision of rural land. The proposed provisions will not be inconsistent with the Rural Subdivision Principles or Rural Planning Principles of the SEPP (Rural Lands) 2008 as the provisions will;

1. not contribute to the unnecessary fragmentation of rural land since the boundary alteration provisions will not enable the creation of additional lots or the potential for further fragmentation of rural land;
2. require consideration of agricultural viability of land prior to the subdivision/boundary alteration being approved ;
3. take account of the constraints of the land and ensure that the subdivision/boundary alteration is appropriate having regard to the natural and physical characteristics of the land and the existing land use; and
4. not create significant additional opportunities for dwellings in rural zones.

The proposal is otherwise consistent with other SEPPs.

Standard Instrument LEP

The principles behind the proposed additional provisions are not inconsistent with the mandatory clauses of the Standard Instrument LEP.

S117 Directions.

The following S117 directions are applicable to the proposal 1.2 Rural Zones, 1.5 Rural Lands, 2.1, Environmental Protection Zones, 2.2 Coastal Protection, 2.3 Heritage Conservation, 2.4 Recreation Vehicle Areas, 3.2 Caravan Parks and Manufactured Home Estates, 3.3 Home Occupations, 3.4 Integrating Land Use and Transport, 3.5 Development Near Licensed Aerodromes, 4.1 Acid Sulfate Soils, 4.3 Flood Prone Land, 4.4 Planning for Bushfire Protection, 5.1 Implementation of Regional Strategies, 6.1 Approval and Referral Requirements, and 6.2 Reserving Land for Public Purposes.

Of the above s117 Directions the proposal is inconsistent with Direction 4.4.

Direction 1.5 Rural Lands is applicable to the planning proposal. The direction provides that a planning proposal that affects land within a rural or environmental zone must be consistent with the Rural Planning Principles in SEPP (Rural Lands) 2008. As previously discussed the proposed changes to the boundary alteration provisions and rural dwelling provisions are not considered to be inconsistent with the Rural Planning Principles of the SEPP and therefore the proposal is not inconsistent with the terms of this direction.

The proposed changes to the boundary alteration and rural dwelling provisions will not result in a significant increase in the development potential of rural land which may be subject to flooding or acid sulfate soils. Therefore the proposal will not be inconsistent with directions 4.1 Acid Sulfate Soils or 4.3 Flood Prone land.

Direction 4.4 Planning for Bushfire Protection is relevant to the proposal. The proposed boundary adjustment and rural dwelling provisions will apply to the majority of rural land in the LGA, much of which is bush fire prone. The Direction requires the RPA to consult with the Commissioner of the NSW Rural Fire Service after a gateway determination has been issued. Until this consultation has occurred the consistency of the proposal with the direction remains unresolved.

The planning proposal is otherwise consistent with S117 directions.

Environmental social
economic impacts :

The planning proposal will not have any direct adverse impact on critical habitat or threatened species, populations or ecological communities, or their habitats. Similarly the planning proposal will not have any direct adverse effect on the natural, built or socio-economic environment.

The planning proposal has the potential to have indirect effects on the natural and socioeconomic environments when boundary alterations occur or when rural dwellings are proposed. However these impacts will vary considerably depending on the characteristics of the subject land and any indirect impact is most appropriately addressed by the development assessment process. Development approval will still be required for boundary adjustments and rural dwellings.

The planning proposal has given consideration to social and economic impacts of the proposed amendment. The social and economic impacts will be largely positive as the amendment to the provisions will provide certainty and clarity for proponents and will improve consistency with neighbouring LGAs.

Assessment Process

Proposal type :	Routine	Community Consultation Period :	14 Days
Timeframe to make LEP :	9 months	Delegation :	RPA
Public Authority Consultation - 56(2)(d) :	NSW Rural Fire Service		
Is Public Hearing by the PAC required?	No		
(2)(a) Should the matter proceed ?	Yes		
If no, provide reasons :			

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Resubmission - s56(2)(b) : **No**

If Yes, reasons :

Identify any additional studies, if required. :

If Other, provide reasons :

Identify any internal consultations, if required :

No internal consultation required

Is the provision and funding of state infrastructure relevant to this plan? **No**

If Yes, reasons :

Documents

Document File Name	DocumentType Name	Is Public
2016-08-22 Council cover letter for planning proposal.pdf	Proposal Covering Letter	Yes
Planning Proposal_Boundary Adjustments.docx	Proposal	Yes

Planning Team Recommendation

Preparation of the planning proposal supported at this stage : **Recommended with Conditions**

S.117 directions:

- 1.2 Rural Zones**
- 1.5 Rural Lands**
- 2.1 Environment Protection Zones**
- 2.2 Coastal Protection**
- 2.3 Heritage Conservation**
- 2.4 Recreation Vehicle Areas**
- 3.1 Residential Zones**
- 3.3 Home Occupations**
- 3.4 Integrating Land Use and Transport**
- 3.5 Development Near Licensed Aerodromes**
- 4.1 Acid Sulfate Soils**
- 4.2 Mine Subsidence and Unstable Land**
- 4.3 Flood Prone Land**
- 4.4 Planning for Bushfire Protection**
- 5.1 Implementation of Regional Strategies**
- 6.1 Approval and Referral Requirements**
- 6.2 Reserving Land for Public Purposes**
- 6.3 Site Specific Provisions**
- 3.6 Shooting Ranges**

Additional Information : **It is recommended that;**

- 1. The planning proposal proceed as a 'routine' planning proposal.**
- 2. The planning proposal is to be completed within 9 months.**
- 3. That a community consultation period of 14 days is necessary for the planning proposal.**
- 4. That the RPA consult with the Commissioner of the NSW Rural Fire Services in accordance with the requirements of S117 Direction 4.4 Planning for Bushfire Protection.**

Supporting Reasons : **The reasons for the recommendation are as follows;**

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1. The proposed provisions will clarify the provisions relating to boundary alterations and rural dwellings.
2. The principles of the proposed provisions are supported and are not considered to be inconsistent with the intent of the Standard LEP.

Signature:



Printed Name:

Craig Diss

Date:

21 / 9 / 16